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**When Does Policy Deliberation Matter?**

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### When Does Policy Deliberation Matter?

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A growing body of literature argues that ideas can play an important role in policy development and institutional change. The empirical evidence presented by this literature is often quite persuasive, but tends to be case-specific. We still lack theoretical understanding of the general conditions that favor the use of rational arguments, and of the factors affecting the reception of such arguments. The main thesis of this paper is that policy ideas and deliberation matter most when public choice is about issues of efficiency -- how to increase aggregate welfare -- rather than about the redistribution of resources from one group of society to another. Ideas are powerless if politics is a zero sum game; when one group's gains are another group's losses only power and interests matter. But politics can also be a cooperative, positive sum game in which the members of a community engage for mutual advantage. In such a context, analysis and deliberation are important for identifying collectively advantageous solutions. Of course, arguments are also used to support or oppose redistributive policies. However, if one examines such arguments closely, one can see that they are mostly about efficiency issues -- for example, they are used to show that a particular method of redistributing income, say, by lump-sum transfers, is more efficient than one that modifies relative prices, or to suggest methods of alleviating the distributional consequences of efficiency-enhancing measures.

The past neglect of the politics of ideas, particularly by neopluralists and neocorporatists, was the natural consequence of an almost exclusive focus on redistributive policies. On the other hand, the current fascination with policy deliberation reflects a growing awareness of the importance of efficiency issues in politics. The shift from redistributive to efficiency concerns is one of the distinguishing features of the political transformations of the last decade.

The general argument that policy deliberation matters most when public choice is about efficiency issues, is developed in the first part of the paper. The second part analyzes two basic modes of policy deliberation: feasibility arguments and post-decision

arguments or "rationalizations". Because efficiency is defined relative to a set of feasible alternatives, arguments about the feasibility of various policy proposals occupy a central position in policy deliberations. Post-decision arguments, on the other hand, facilitate cooperation among policy actors by transforming a one-shot situation into an iterated game. The requirement that reasons be given for one's decision, even if the reasons are entirely post-hoc, is an essential pre-condition of public discourse.

### The rediscovery of efficiency

Policy analysts used to be criticized for being too abstract, too committed to synoptic rationalism, not sufficiently attuned to political and institutional realities; in short, they were dismissed as being politically irrelevant. In fact, the practical impact of policy analysis during the 1960s and most of the 1970s, appeared to be quite limited. Thus, several case studies showed that cost-benefit analysis was systematically ignored by policymakers in setting priorities or choosing among alternatives, or else was used to justify ex post decisions taken on other grounds. Similarly, professional policy evaluation seemed to be largely irrelevant to the continuation or termination of public programs.

Then the mood changed. Starting in the late 1970s, analyses produced by a growing number of policy think tanks could be shown to have observable impacts. In Europe and the United States deregulation, privatization, regulatory reform and welfare reform were preceded and prepared by intense intellectual debates. Policy instruments such as pollution taxes or emissions trading, long rejected by politicians, bureaucrats and environmentalists alike, received serious attention beyond academic circles, and in some cases were actually used. American and, more timidly, European courts began to review the decisions of administrative agencies in substantive, as well as procedural, terms. A spreading belief that public policy should be right, rather than merely the product of group struggle, led to demands that administrators should combine ethical discourse and technical expertise to achieve synoptic decisions that were substantively correct as well as democratically legitimated (Shapiro 1988). From this it was only a small step to suggest that courts should require executive agencies to show that they had maximized net social benefits, subject to statutory, budgetary, and informational constraints (Rose-Ackermann 1992; Sunstein 1990).



Paralleling these developments in public policy and public law, concepts such as issue networks, policy learning, politics of ideas, professionalism in policymaking, epistemic communities, consensual knowledge and, especially, policy deliberation gained wide currency in the literature of political science and international relations. Ideas and arguments were no longer seen as simply reflecting group interests or material conditions. Rather, it was increasingly accepted that ideas have the power to change the perceptions a group has of its own interests, and to make possible new courses of action that change the material world itself (Hall 1989).

Again, during the same period the notion of public interest enjoyed a remarkable revival. In the 1970s, the economic theory of regulation and, more generally, the public choice school were thought to have put public interest theories of politics to rest. Such theories, it was argued, represent normative wishes rather than explanations of real world phenomena. For example, while the normative or public interest theory of regulation regarded market failure as the main justification or motivating reason for introducing public regulation, George Stigler argued in a path-breaking article that "regulation is acquired by the industry and is designed and operated primarily for its benefits" (Stigler 1971:3). Stigler's positive theory assumes that what matters to each participant in the regulatory game is their wealth or utility, not aggregate social wealth. Hence the real purpose of public regulation is redistribution rather than the gains in allocative efficiency that would result from the correction of market failures.

Despite the academic popularity of the economic theory of regulation, it soon became clear that its predictive power was limited. Important areas of regulation like antitrust, environmental and consumer protection or occupational health and safety can hardly be said to be designed and operated primarily for the benefits of producers (Wilson 1980; Kalt and Zupan 1984; Majone 1989). An even more serious difficulty for Stigler's theory is its failure to provide a satisfactory explanation of why most competitive industries are not subject to price or entry regulation, even though the producers should find such regulation in their interest. Noting such failures of the positive theory, Peltzman (1989:17) observed that "[i]f there is an empirical basis for the normative theory's continuing attraction for economists, it is probably its apparent success as a theory of

regulatory origin. The correspondence between the normative theory and the real-world allocation of regulatory effort seems striking."

These various developments are clearly interconnected: since an efficient policy is one that promotes aggregate social welfare rather than the welfare of particular groups, it is impossible to identify efficient solutions without appealing to the public interest as determined, case by case, through policy deliberation. Thus the emergent view of politics as a positive sum game from which all can benefit, displays considerable coherence. Although this view, rooted in the philosophy of Locke and the contractarians, denies the centrality of redistributive issues and emphasises the correction of market failures and provision of pure public goods as the main policy objectives, it cannot be easily located along the traditional left-right spectrum. In the United States, for example, both progressives and Reagan conservatives believed that government intervention in the economy should be justified by reference to market failures and that, in so far as possible, cost-benefit tests should be used to set regulatory policy. There was also convergence between the two groups in favor of market schemes and the use of economic incentives in the implementation of public policies (Rose Ackerman 1992). These positions are now widely accepted also by the European Left.

Historically, this ideological convergence is not difficult to explain. Unprecedented increases in the costs of redistributive programs during the 1960s and early 1970s (Geiger 1978) and the explosion of powerful special-interest lobbies -- the main theme of Mancur Olson's controversial book on The Rise and Decline of Nations (1982) -- were widely perceived by both Left and Right, in Europe as well as in the United States, as a serious threat not only to the efficiency but also to the legitimacy of the democratic state. These different strands of thought came together in the critique of pluralism.

#### From pluralist equilibrium to interest-group stasis

According to the founders of modern pluralism, public policy is the equilibrium reached in the struggle among competing group interests at a given moment; the legislative vote on any issue, a direct reflection of the balance of power among these groups. When the groups are adequately stated, everything is stated, Bentley wrote in 1908. In 1956 Dahl was still arguing that one cannot describe the actual operations of democratic societies in



terms of the contrasts between majorities and minorities: "We can only distinguish groups of various types and sizes, all seeking in various ways to advance their goals, usually at the expense, at least in part, of others" (Dahl 1956: 131).

A direct corollary of this pluralist reductionism is that neither ideas nor institutions matter and, hence, do not need to be included in any formal model of the policy process. To quote Bentley again, "[t]he only reality of the ideas is their reflection of the groups, only that and nothing more" (Bentley 1967: 169). A group might appeal to the "public interest" in support of its claims, but this is nothing more than a publicity ploy to increase the attractiveness of its demands. Concerning institutions, Bentley, Truman and especially Latham recognized that sometimes public agencies and groups of public officials play an independent role, but only as interest groups among other interest groups. For the most part, however, the prime actors in policymaking in the pluralist tradition are private groups (Lindblom 1965: 13). Lacking any institutional embedding or ideological underpinning, policymaking is a series of zero-sum games among unevenly matched players.

Pluralists were of course aware that groups wield unequal power and that access to the policy process is unbalanced. Nevertheless, the general conclusion was that all active and legitimate groups in the population would be able to make themselves heard at some stage in the process. Control over policy outcomes might be unevenly distributed; some measure of access is, however, available. This, Dahl concluded, "is no mean thing in a political system" (Dahl 1956: 150). Thus, by the early 1960s, pluralism became not only an account of what is, but a model of what ought to be.

This benign view of interest group competition was shattered by Mancur Olson's demonstration that commonality of interests is not a sufficient condition for the formation of active and legitimate groups. On the contrary, because of the pervasive phenomenon of free riding, the special interests of the few tend to be more readily organized into groups than the general interests of the many (Olson 1965). By the same logic, given a choice between supporting efficiency-increasing or redistributive policies -- between trying to increase the size of the cake or concentrating on how to cut it -- special-interest groups will opt for redistribution since this increases their chances of obtaining a larger share of the social output. With time, the growing influence of special-interest lobbies distorts prices, restricts competition and slows down economic growth, leading to a condition

termed by Andrew Mc Farland "interest group stasis", at best a static, if not a declining economy (Mc Farland 1992: 60-65). Moreover, the increased emphasis on distributional issues due to accumulation of special interest groups makes political life more divisive by reducing the significance of widespread common interests. In struggles over redistribution no group can gain without other groups losing as much or more, and this generates resentment (Olson 1982: 41-47). That one group may lose more than the other group gains is of course due to the fact that redistribution is not costless but usually entails a "deadweight loss" -- the social cost of setting up and operating the redistribution system, or of attempting to evade it.

The first response to these criticisms of group politics was, in the words of Martin Shapiro, "an almost frantic pursuit of more and more perfect pluralism" (Shapiro 1988: 49). In the 1960s and 1970s pluralism had exerted a strong influence over American administrative law. More and more groups were given the right to participate in the decision making process of regulatory agencies and to file law suits in courts challenging agency decisions they did not like. Agencies were required to accept, and respond to, comments on proposed rules from the interested public. Now agencies were asked to provide public funding to the poorer groups in order to equalize access to the regulatory process. Rules of standing were expanded to include even persons who really had no special interest in an administrative decision other than that of a good citizen. "Most importantly, the courts began to pour over the rule-making record. They invalidated rules if they could find even the tiniest mumble by the tiniest group to which the rule-making agency had not responded". (ib.49-50).

But at the time these attempts to perfect group politics were made, disillusion with pluralism was already setting in. On the one hand, given the widely varying resources of different groups, it was not clear that access to agency decision making could ever be effectively equalized. Moreover, experience had shown that the "dialogue" requirement could be used by powerful economic interests in order to delay regulatory decisions in fields like environmental protection and occupational health and safety. On the other hand, mounting evidence about the deadweight losses of group politics gave support to the idea that there is a public interest or a right public policy quite apart from the sum of group interests. If the processes of group politics yield public policies that are not economically



efficient, such as subsidies to farmers or to coal producers, then those policies are substantively wrong even if the groups all struggled vigorously.

### The politics of efficiency

One solution for many of those dissatisfied with group struggle was to turn to rationality or efficiency as criteria for public policy and rational or "synoptic" decision-making processes as the best decision-making processes. "Good" policy was no longer to be the product of group struggle, but the product of rational policy analysis (Shapiro 1988: 15-16). However, it is clear that not all policy issues can be settled by such criteria. Indeed, efficiency considerations could hardly play a role in politics if it is true that a political situation is "precisely one that arises when the parties are arguing not about mutually useful trades but about the legitimacy of one another's initial position" (Barry 1965: 313). In this view efficiency considerations belong to the economics, while politics deals with redistribution, including the authoritative allocation of property rights. Or, as some authors preferred to put it, most economic activity is a positive sum game, while most political activity is a zero sum (or negative sum) game (Riker 1962).

But as already suggested above, this is an outdated view of politics that does not take into account the political significance of the increasing number of public policies attempting to correct various kinds of market failure. Environmental policy, for example, attempts to reduce negative externalities by forcing producers and consumers to include the social costs of pollution in their calculations. If the policy succeeds in reducing the gap between private and social costs, this is an improvement in allocative efficiency, a movement from a position off the efficiency (Pareto) frontier to a point on it. The same rationale applies to most other policies of social regulation such as consumer protection, risk management and occupational health. It is no accident that all the examples given by Shapiro of recent tendencies to move away from group struggle and toward "rational" decision making -- environmental and regulatory impact statements, requirements that agency decisions be justified by cost-benefit analyses, and statutes that specify that agencies make rules on the basis of the "best available evidence" or "substantial evidence on the rule-making record as a whole" -- come from the field of social regulation (Shapiro 1988: 15).

Social regulatory policies are both politically salient and, unlike many redistributive policies of the past, (potentially) efficiency improving (Majone 1993). Thus it is becoming increasingly important to understand how the politics of efficiency differs from the politics of redistribution with which political scientists have been traditionally concerned. Useful starting points for an analysis of the politics of efficiency are Dennis Mueller's comparison of the assumptions favoring the majority and unanimity rules, and George Tsebelis' distinction between efficient and redistributive institutions (Mueller 1989: 96-111; Tsebelis 1990: 104-18).

X Institutions are said to be efficient if they improve, with respect to the status quo, the conditions of all (or almost all) individuals or groups in a society. The example given by Tsebelis is an institution that solves problems of coordination or of prisoners' dilemma, but a more important example for our discussion is the unanimity rule. This rule is efficient since it guarantees that the result of collective choice is a Pareto-efficient position -- anybody adversely affected by a collective decision can, under unanimity, veto it.

Redistributive institutions improve the conditions of one group in society at the expense of another. The most prominent example is, of course, majority rule. The advocates of majority rule envisage conflictual choices in which no mutually beneficial opportunities are available, as is typically the case with distributional or property rights issues. The advocates of majority rule also assume that the alternatives facing a community are single-dimensional and mutually exclusive, so that compromise proposals are not possible (Buchanan and Tullock 1962: 253).

By contrast, "the political process implicit in the unanimity rule argument is one of discussion, compromise and amendment, continuing until a formulation of the issue is reached benefiting all. The key assumptions underlying this view of politics are both that the game is cooperative and positive sum, that is, that a formulation of the issue benefiting all exists, and that the process can be completed in a reasonable amount of time, so that the transaction costs of decision making are not prohibitive" (Mueller 1989: 102; emphases in the original).

The comparison of efficient and redistributive institutions shows very clearly the crucial importance of public deliberation for the politics of efficiency. Argument and persuasion are needed to discover opportunities of collective gains and to elicit support in



favor of the most efficient ways of exploiting such opportunities. Naturally, the unanimity rule represents only an idealized model. Except perhaps for very small communities, this method of collective choice entails prohibitive transaction costs. Even Buchanan and Tullock, the most enthusiastic among the modern advocates of the rule, admit that the decision-time costs may be sufficiently high to rule out a full unanimity rule as a practical possibility. Before them, Wicksell (1896) was prepared to accept near unanimity or some high fractional rule (say, 75 percent) as a second-best solution. Both Wicksell and, more formally, Buchanan and Tullock (1962) attempt to preserve some of the advantages of unanimity by choosing an optimal "nonunanimity" rule. However, this is not the only option. With respect to policy deliberation, certain non-majoritarian institutions like the courts and expert administrative agencies perform functions similar to those of the unanimity rule.

#### Policy deliberation and non-majoritarian institutions

By definition, non-majoritarian institutions are not directly accountable to the people through elections or other political processes. Populistic democracy (Dahl 1956) has always been suspicious of such institutions precisely because of their independence from elections or direct supervision by elected officials. Even the U.S. Supreme Court has seen its democratic legitimacy challenged on such grounds (Freedman 1978), and similar concerns have impeded the development of judicial review in Europe (Volcansek 1992). At the same time, however, courts, administrative tribunals, independent administrative agencies, investigating commissions, independent central banks and other non-majoritarian institutions play key roles in all democratic societies. In practice, it has always been understood that for many purposes reliance upon qualities such as expertise, professionalism, independence and continuity has more importance than reliance upon direct political accountability.

This common sense view finds support in several strands of political thought, especially American. One of the important contributions of James Madison in The Federalist has been the argument that majoritarian means cannot alone create governmental institutions capable of pursuing coherent policies in the public interest. A certain insulation of government from episodic shifts in public opinion is, according to Madison, an

important safeguard against "factionalism" -- the usurpation of government by powerful and self-interested groups -- and the threats which factionalism poses to the republican belief in deliberative democracy. Also the tradition of the Progressive movement, represented by such figures as Theodore Roosevelt and Woodrow Wilson, attached great importance to the insulation of government from short-term party politics and electoral interests as a way of ensuring both efficiency and honesty in public affairs (Hofstadter 1955).

Finally, the ideologists of the New Deal defended the independence of the regulatory commissions as necessary to the acquisition and effective use of that expertise which was the raison d'être of such bodies. The regulatory commissions emerged and became important instruments of governance for industry precisely because Congress and the courts proved unable to satisfy the "great functional imperative" of specialization. In the words of Merle Fainsod, regulatory agencies "commended themselves because they offered the possibility of achieving expertness in the treatment of special problems, relative freedom from the exigencies of party politics in their consideration and expeditiousness in their disposition" (Fainsod 1940: 313).

Regulation by means of independent agencies responsible for the correction of specific forms of market failure, is no longer a purely American phenomenon. Since the 1970s, regulatory agencies have become an increasingly significant part of public administration also in Europe (Majone 1991, 1992, 1993). The functional explanations given by European scholars for the rise of the independent agencies are strongly reminiscent of the arguments of earlier American writers. Thus it is said that agencies are justified by the need of expertise in highly complex or technical matters; that an agency structure may favor public participation, while the opportunity for consultations by means of public hearings is often denied to government departments; that agencies' separateness from government is useful whenever it is hoped to free government administration from partisan politics and party political influence. Agencies are also said to provide greater continuity and stability than cabinets because they are one step removed from election returns; and because of their independence, they are able to protect citizens from bureaucratic arrogance and reticence, and also to focus public attention on controversial



issues, thus enriching public debate (Baldwin and Mc Crudden 1988: 4-9; Teitgen-Colly 1988: 37-47; Guédon 1991: 16-27).

These arguments echo many characteristic themes of the politics of efficiency: an awareness of the mismatch between existing institutional capacities and the growing complexity of policy problems; the vision of administrators as advocates of the public interest rather than as mere aggregators of group preferences or captives of dominant groups; and especially the emphasis on policy deliberation as the method for identifying true public values and choosing the best means for implementing such values. The references to public participation and to the protection of citizens from bureaucratic arrogance and obfuscation show that democracy is not at issue. In fact, many of those who espouse the model of the deliberative agency combining ethical discourse and technical expertise to achieve policy decisions that are both substantively correct and politically legitimated, recognize that such non-majoritarian institutions must be subjected to stringent democratic controls. To quote Martin Shapiro (1988: 34):

All interest groups are to have as nearly as possible equal access to the deliberators. There is to be a public record of the deliberation. The deliberators are to provide the public a reasoned explanation of their decision. In their search for values, administrators are to take the values incorporated into the governing statutes by the democratically elected legislature as crucial. Courts will engage in judicial review of administrative decisions to ensure that they are in accord with the values and goals of the legislature.

To summarize the argument so far, policy deliberation matters most when the issues under discussion have to do with efficiency rather than with pure redistribution. Public choice under unanimity rule represents the ideal institutional setting for public deliberation. This model is generally infeasible because of the high decision costs it entails, but in some important areas of policymaking the expert agency, disciplined by strict procedural and substantive requirements, may be viewed as a workable second-best solution. In the second part of this essay I shall discuss two characteristic ways in which ideas and arguments influence policy outcomes.

### Feasibility arguments

As Michael Polanyi once wrote, the existence of social tasks that appear both desirable and feasible but are in fact impracticable has set the stage for a wide range of conflicts in modern history. All the battles of social reform were fought partly on this ground, with conservatives overstating and progressives underestimating the limits of the possible in public policy (Polanyi 1951: 169). This explains why arguments about the feasibility of various policy proposals occupy such a central position in policy deliberation (Majone 1989).

Causal knowledge is best expressed in the form of constraints or limiting conditions. This is because all theories express some kind of regularity or invariance and thus impose limits on the range of observable phenomena. Reality, Einstein once observed, restricts the wealth of logical possibilities; science attempts to discover these restrictions. Scientific laws "do not assert that something exists or is the case; they deny it. They insist on the nonexistence of certain things or states of affairs, proscribing or prohibiting, as it were, these things or states of affairs; they rule them out" (Popper 1968: 69). This view of theories as constraints is important for understanding how theoretical knowledge can be applied to practical problems. Consider how scientific knowledge is used in technology. Scientific theories do not tell engineers how to achieve particular goals. Rather, they show why seemingly reasonable goals are in fact infeasible; why, for example, it is impossible to construct engines that are 100 percent efficient, or to eliminate friction completely. In principle, social scientific theories can and should be used in the same way. Even if it is not derived from carefully controlled experiments, social knowledge often codifies a great deal of practical experience in which something has been attempted by many routes and all of them have resulted in failure. Our knowledge about bureaucracies and other social organizations, for instance, is largely of this kind (Downs 1966; Wilson 1989).

However, one important difference between social and physical constraints is that the consequences of violating the former are not usually as immediately apparent as in the case of physical impossibilities. For this reason it is often politically difficult to resist the temptation to disregard economic or institutional constraints. Rent control is a classic example. Although the objective of controlling rents is to protect the consumer from the skyrocketing increases in rents that accompany a housing shortage, the long-run effect is



to make almost everyone worse off by discouraging the construction of rental apartments and the upkeep of the existing stock, while encouraging the abandonment of old housing units or their conversion into office space in order to escape controls. These consequences have been known for some time, yet a number of cities that had abandoned rent control during the 1950s began to reinstitute this measure with the inflation of the 1970s.

Arguments about the negative consequences of rent control gained wider acceptance in the 1980s as part of the general shift toward more efficient policies.

To understand the role of feasibility arguments in policy deliberation it is also important to distinguish between objective and self-imposed constraints (Majone 1989: 82-84). Objective constraints such as physical or technological limitations do not depend on our goals or values. We do not choose them; they are imposed on us. But many of the most important limitations on policymaking are not externally imposed; they are self-imposed, the result of a free choice or commitment. Once they are made, however, these commitments restrict the range of available alternatives in precisely the same way as do physical, technical, and other objective constraints. For example, the power to bind oneself is one of the most important tactics in bargaining. The negotiator who makes an irrevocable commitment to a certain course of action, and who succeeds in communicating it persuasively to the other party, has changed voluntarily and irreversibly the objective situation in which the negotiation takes place (Schelling 1963).

The variety of self-imposed constraints is quite large, as shown by the following partial categorization:

- a. Constraints that are adopted for a limited purpose or time, or are accepted "until further notice" (for example, contractual commitments, rules of the game, promises, conventional definitions or interpretations of certain terms in a document, administrative procedures and routines, strategic commitments by which one binds oneself in continuous negotiations).
- b. Constraints that are considered indispensable for the achievement of certain policy goals (for example, distributional constraints, rules of reciprocity, "due process", consistency, precedents, deference to other policymakers).

c. Constraints that are accepted implicitly, but whose existence is acknowledged only when they are challenged or violated (for example, cultural norms, rules of etiquette, professional standards, tacit agreements).

A third important distinction is that between short-run and long-run constraints. In the short run, technology, institutions, administrative capacities, financial resources, and, in the very short-run, even physical inputs and manpower must be taken as given. Given sufficient time, however, technological limitations and institutional obstacles can be removed, laws changed, capacities increased, and new skills learned -- usually at a cost. The time dimension is important because factors that might be disregarded in the short run can become binding constraints in a long-run perspective. Thus, the need to maintain continuing cooperative relationships among policy actors imposes restrictions on acceptable behavior that can be ignored when agreement is needed only once or only on a single issue.

Because of the variety of potential policy constraints, shared beliefs about the limits of the possible in public policy are essential to the search for collective gains. Argument and persuasion play a key role in identifying constraints, evaluating their significance for different implementation strategies, and estimating the costs and benefits of relaxing those constraints that are not absolutely fixed. The agreed set of constraints, both objective and self-imposed ones, constitute the rules of the policy game. However, the rules are never completely known when the game starts. This is because at the time a policy is initiated it is impossible to know all the relevant limiting factors, and it is often difficult even to tell beforehand which of the assumed constraints will actually be binding. As the policy moves from decision to implementation, previously hidden constraints will emerge, forcing more or less radical changes. This iterative process of discovering constraints and modifying goals or strategies accordingly is the essence of policy implementation.

The uncertainty surrounding the implementation process suggests that policy may be usefully viewed as an incomplete contract (Milgrom and Robert 1992) among the main actors. As Garrett and Weingast (1991) and Goldstein and Keohane (1993) have argued, ideas can serve as solutions to problems associated with incomplete contracting: when



agreements are likely to be incomplete, shared beliefs about the spirit of the agreements are essential to the maintenance of cooperation. Consider, for example, the problem of differentiating between real constraints and fictitious obstacles or pseudo-constraints set by mental or institutional inertia, risk aversion, lack of imagination, or put up as an ideological screen to protect vested interests. The problem of distinguishing between real and apparent constraints exists even if one assumes that all actors are in good faith. In fact, whether or not a constraint is actually binding in a given problem can often be determined only after the problem has been solved. Even when there are a priori reasons to believe that the constraint will not be binding, it may not be wise to ignore it, for it could become binding if some of the data and parameters of the problem change. All these problems of incomplete contracting can be resolved only with the help of shared beliefs about the possibility of finding mutually advantageous solutions.

Ideas are important not only in identifying and categorizing policy constraints, but also in pushing out the boundaries of the possible in public policy. What is politically feasible within given constraints, and even the constraints themselves, depend on the limits of popular knowledge and the relation of popularly accepted values to permissible practice. Hence, political constraints on policy can be eased only after public opinion has been conditioned to accept new thinking, new symbols, and new and broader concepts of the public interest (Heller 1967: 27). Keynes's contribution to the public debate on the problem of wartime finance in the late 1930s is an excellent example of this. From the outset, a biographer writes, "Keynes involved himself in the problems of war finance on two fronts -- maximizing the possible under the existing constraints and easing the constraints themselves" (Moggridge 1976: 116). Keynes's arguments created a climate of opinion that made war and cheap money seem compatible to the authorities. In order to get across the reasoning behind his plan and to find ways of making it more generally acceptable, Keynes engaged in a massive effort of education and persuasion. After some modifications, Keynes's proposals did gain wide acceptance and became the basis of wartime financial policy in Great Britain.

### Rationalizations

Arguments are also used to justify policy decisions already taken. When the arguments are based on considerations different from those that led to the decision, they are usually dismissed as attempts at "rationalization". I shall try to show that this criticism, even if it is justified in particular cases, misses important aspects of the process by which ideas influence policy.

The frequent use of post-decision arguments in quite different contexts is an indication that such arguments may serve important social functions beyond providing mere "rationalizations" for politically or bureaucratically determined positions. Consider the case of a judge who decides a case on the basis of his or her subjective notion of fairness, a hunch that a particular decision would be right, while realizing at the same time that considerations of this kind do not count as justifications for a binding determination. Thus, the judge frames her opinion in the objective categories of legal argument, and any subsequent developments in the case (for example, an appeal) will be based on the published opinion, not on the actual process followed by the judge in coming to the conclusion. In fact, most legal systems allow the opinion stating the reasons for a judicial decision to follow rather than precede the decision. Also, different judges may agree on a decision but disagree about the best way to justify it; in the American system they are given the opportunity to present their positions in separate arguments.

Such procedural rules must appear absurd to somebody who assumes that a judicial opinion is an accurate description of the decision process followed by the judge in coming to a conclusion. If, however, the opinion is viewed as a report of justificatory procedures employed by the judge, then the appeal to legal and logical considerations which possibly played no role in the actual decision process becomes quite understandable (Wasserstrom 1961). In fact, the judge's opinion is not the premise of a syllogism that concludes in the decision; it is, rather, a means of exercising rational control over conclusions that may be suggested by extralegal considerations, and of facilitating communication among participants in the legal process.

Scientific reports play a role similar to that of the judge's opinion in facilitating communication within the scientific community. According to a distinguished physicist and philosopher of science, scientific reports "are not diaries or journals, telling us exactly what occurred in a particular laboratory on a particular day. They give, rather, a carefully



edited version of such events, and inform us what ought to happen if you try to repeat the experiment yourself under the prescribed conditions" (Ziman 1968: 35). The communication of the experimenter to his or her colleagues is not merely an exposition of what happened when certain operations were performed; rather, it is an attempt to convince them that the results are plausible and interesting, and that they deserve further discussion.

As my third example I take a well known episode in the history of the diffusion of economic ideas. President Franklin D. Roosevelt's policy of increased government spending to reduce unemployment and get out of the depression has been called Keynesian. But Roosevelt did not have to learn about government spending from Keynes. The idea that the influence of the British economist lay behind the policies of the New Deal began to take root fairly early, but it is only a legend (Winch 1969). The theories of Keynes only provided a sophisticated rationalization for what Roosevelt was doing anyway. The answers that these theories provided to questions about the causes of long-term unemployment and the reasons for the effectiveness of public spending were not prerequisites for Roosevelt's expansionist fiscal policy. But as these answers came to dominate the thinking of economists and politicians, they helped to make expansionist fiscal policy the core idea of liberal economic policy for several decades. In the words of a former chairman of the President's Council of Economic Advisers, "[w]ithout Keynes, and especially without the interpretation of Keynes by his followers, expansionist fiscal policy might have remained an occasional emergency measure and not become a way of life" (Stein 1984: 39).

These examples reveal three main functions of post-decision arguments. First, they serve to rationalize policy in the sense of providing a conceptual foundation for a set of otherwise discrete and disjointed decisions. Policymakers often act in accordance with pressures from external events or the force of personal convictions. In such cases arguments are needed after the decision is made to explain it, to show that it fits into the framework of existing policy, to increase assent, to discover new implications, and to anticipate or answer criticism. Moreover, since policies exist for some time, their political support must be continuously renewed and thus new arguments are constantly needed to

give the policy components the greatest possible internal coherence and the closest fit to an ever-changing environment.

Second, post-decision arguments serve to institutionalize ideas. Stein's observation about the importance of keynesian ideas in making expansionist fiscal policy "a way of life" captures the essence of the process. In a similar vein, Garrett and Weingast (1991) have shown how the idea of "mutual recognition", already present in the Treaty of Rome creating the European Economic Community, became institutionalized through the jurisprudence of the European Court of Justice and several documents of the European Commission. In this form, the idea had a powerful influence on the development and implementation of the internal market program. It is important to note that the relationship between policy and institutionalized ideas (or meta-policy) is a dialectic one. Rather than disclosing new possibilities, such ideas only codify initial practice; at the same time, however, they serve to rationalize, evaluate and transform that same practice. Hence, our understanding of the way a policy develops cannot be separated from the institutionalized ideas and theories by which the policy is guided and evaluated (Majone 1989: 146-49).

The third, and perhaps most important, function of post-decision arguments is to transform a single play into a sequential game by facilitating communication and monitoring. Only the judge's written opinion, not her decision as such, allows interested parties to make further moves like appealing the decision. It is important to keep in mind that in this as in other legal proceedings such as constitutional judicial review, the issue is what reasons can be given, even if those reasons are entirely post-hoc. This shows that the purpose of the giving reasons requirement is not to improve the quality of a single decision but to facilitate the development of the entire process.

Our previous discussion of judicial review of regulatory agencies is also relevant here. The requirement that administrators give reasons for their decisions (as demanded by the U.S. Administrative Procedures Act or Article 190 of the EEC Treaty) generates a record consisting not only of the reasons actually given, but also of the statutes or treaty articles that those reasons elaborate. Thus, the giving reason requirement opens the door to a dialogue about rival statutory interpretations by court and agency. Also public participation and policy deliberation are possible only if administrators have to give reasons for their decisions.



The importance of transforming a single play into an iterated game has been demonstrated by game theory. In a prisoners' dilemma situation repetition allows more complicated strategies than simply "cooperate" or "defect". When the game is repeated patterns of cooperation emerge that would be highly unlikely in a single play. The giving reasons requirement changes one-shot situations into iterated or sequential games. Hence it is an efficient institution designed to facilitate cooperation among policy actors.

Conclusion: the revival of government by discussion?

Deliberation is so much at the heart of democratic politics and policy that democracy has been called a system of government by discussion. Political parties, the electorate, the legislature, the executive, the courts, the media, interest groups, and independent experts all engage in a continuous process of debate and reciprocal persuasion. This process, as liberal theorists from John Stuart Mill and Walter Bagehot to Lord Lindsay and Ernest Barker have described it, begins with expressions of general concerns and ends in concrete decisions. Each stage of deliberation has its own function and its own organ. Parties identify issues and formulate programs; the electorate discusses issues and candidates and expresses a majority in favor of one of the programs; the legislative majority translates programs into laws, in constant debate with the opposition; finally, the discussion is carried forward to the chief executive and the cabinet where it is translated into specific policies. Each of the stages and organs of public deliberation is independent, but only within the limits, and as a part, of the entire process.

Liberal theorists understood that unregulated discussion easily ends in unending dispute and even in violence. An unorganized deliberative body is open to various forms of disruption, such as filibustering. To avoid or reduce these dangers, public deliberation has been carefully institutionalized in all modern democracies. Today's elaborate codes of parliamentary, electoral, administrative, and judicial procedure are the fruit of centuries of experience in coping with practical problems of public deliberation. The general purpose of these procedures is to ensure the hearing of many opinions without compromising the need to reach a conclusion. Their importance is such that the history of democratic government may be considered the history of various procedures devised to institutionalize and regulate public deliberation.

However, while rules of debate have hardened into institutions in the traditional forums of public deliberation, in newer arenas of debate, such as environmental and health regulation or risk management, appropriate procedures and standards of argument are still lacking. This is due to the intrinsic complexity of the issues, but also to the fact that debate about such issues is increasingly transnational, so that its institutionalization requires the creation of supranational rules and administrative capacities. The difficulty of the task is demonstrated by the opposition of the states of the European Community to the idea of European regulatory agencies. In this case, the traditional resistance to the diffraction of state power through wide grants of regulatory discretion to non-majoritarian institutions is reinforced by fears about the loss of national sovereignty.

Even at the national level, the task of redesigning the institutions of public deliberation in order to adapt them to the growing complexity of policy problems, has been largely neglected. Indeed, until recently the very idea of government by discussion appeared to be hopelessly outdated. I have argued that the current fascination with policy deliberation is closely related to the rediscovery of efficiency, and of the limits of the possible in public policy, as central themes of political discourse. Now we understand that the insistence of the liberal theorists on the importance of deliberation rested on the distinction between efficient and redistributive policies -- a distinction which usually remained implicit. As Dennis Mueller has pointed out, it was one of Wicksell's important insights to have explicitly recognized the distinction between allocation and redistribution decisions, and the need to treat these decisions with separate collective decision processes. The neglect of distributive issues in economic and social regulation does not imply that such issues are unimportant, but only that policies designed to correct market failures are poor redistributive instruments. Paradoxically, the past emphasis on equity to the exclusion of efficiency often made the poorest people worse off. To avoid such undesirable consequences in the future it is important to emphasize that politics is concerned with efficiency as well as redistribution, and that the two groups of issues should be dealt with by separate and different policymaking processes.



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